

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA, HUNTINGTON DIVISION
BEFORE THE HONORABLE ROBERT C. CHAMBERS, JUDGE

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CLAUDE R. KNIGHT and CLAUDIA
STEVENS, individually and as
personal representatives of the
Estate of BETTY ERLINE KNIGHT,
deceased,

Plaintiffs,

vs.

No. 3:15-CV-06424

BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,

Defendant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRETRIAL CONFERENCE

TUESDAY, SEPTEMBER 18, 2018, 1:30 P.M.

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For the Plaintiffs: CHILDERS, SCHLUETER & SMITH
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(Appearances continued next page...)

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1 HUNTINGTON, WEST VIRGINIA

2 TUESDAY, SEPTEMBER 18, 2018, 1:26 P.M.

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4 THE COURT: Good afternoon.

5 MR. CHILDERS: Good afternoon, Your Honor.

6 MR. LEWIS: Good afternoon, Your Honor.

7 THE COURT: All right. Do we have everyone here we
8 expect and needed?

9 MR. CHILDERS: Yes, sir.

10 THE COURT: All right. I've gone over the amended
11 pretrial order. It appears that the only thing the parties
12 identified as being a matter for the Court to decide prior to
13 trial were the deposition designations; is that right?

14 MR. CHILDERS: That's correct, Judge. And we are
15 still working through those and communicating with your law
16 clerks. We would like a little bit more time today, and we're
17 making progress to reduce the amount of things we have to ask
18 you to rule on.

19 THE COURT: Well, as anxious as I am to redo
20 deposition excerpts, I'll certainly wait and give you a little
21 more time to see if you can resolve them.

22 At this point, do you have any sense of the number or
23 the volume? I'd like to have some idea, if things don't work
24 out, about how much I'm going to have to devote to this.

25 (Off the record.)

1 THE COURT: Please make sure your microphones are on
2 and use them. The acoustics are not very good in this
3 courtroom.

4 MR. CHILDERS: I'm not sure if I could estimate that
5 for you. There are a total of 13 depositions, and I don't --
6 actually there is more than that. You guys have some as well.
7 Probably 15 to 18 depositions.

8 I don't -- it's hard for me to tell you how many
9 objections there --

10 THE COURT: Well, and so are you talking about 13 or
11 more depositions of which there are a limited number of
12 excerpts that are at issue? Or are you talking about
13 something broader than just excerpts, questions and answers
14 here and there, or both?

15 MR. CHILDERS: I'd say the ones that haven't been
16 discussed very broadly have objections. The ones that we have
17 discussed have been very much narrowed down to --

18 THE COURT: Great.

19 MR. CHILDERS: -- some precise issues.

20 THE COURT: Well, when do you expect to finish up with
21 whatever you can do by agreement?

22 MR. CHILDERS: By early next week at the latest.

23 THE COURT: Okay. Well, I'd certainly like to have
24 whatever you can't resolve presented to the Court either at
25 the end of business on Tuesday or first thing Wednesday,

1 Wednesday morning.

2 And then at this point, how do you expect to tender
3 those matters to the Court?

4 Are you just going to hand us depositions and say
5 objections are at these pages and --

6 MR. CHILDERS: I think we'd be open to however the
7 Court would prefer we do that, Your Honor.

8 THE COURT: Well, it's hard for me to tell that until
9 I see some of them frankly.

10 MS. JONES: Your Honor --

11 MR. CHILDERS: That's how we have exchanged -- I'm
12 sorry.

13 We've exchanged them as here are the lines and pages
14 we object to --

15 THE COURT: Okay.

16 MR. CHILDERS: -- without the testimony attached.

17 MS. JONES: Your Honor, good afternoon. Phyllis
18 Jones.

19 I think from our perspective, many of the issues
20 related to the deposition designations, at least for the
21 company witnesses, fall into topical buckets. So there are
22 certain issues that, once we have guidance from the Court on
23 the broader issue, we probably can sort out the actual page
24 and line.

25 So I think, from our perspective, what might be most

1 sensible is for us to make some kind of submission that
2 highlights what those buckets of issues are and then submit
3 something that actually gives you the more granular page and
4 line to the extent that that is useful to the Court.

5 THE COURT: All right. And when would you expect to
6 be able to do that?

7 MS. JONES: Well, I think the timeline that
8 Mr. Childers has laid out and what Your Honor mentioned is
9 entirely feasible given the schedule that we're working on at
10 the moment.

11 THE COURT: Okay. Well, then may I expect that each
12 side will submit no later than let's say noon on Wednesday
13 whatever memoranda in support of your objections along with
14 the designation of the deposition by the name of the deposed
15 witness and then the specific pages and/or lines where the
16 objections are raised?

17 MS. JONES: That's fine with us, Your Honor.

18 THE COURT: And, you know, since I can only guess that
19 maybe it's going to turn out to be voluminous, I guess what
20 I'd like to do is have you go ahead and provide a hard copy of
21 that, at least for me. It's a lot easier for me to work from
22 a hard copy than on the computer. So I would like each side
23 to do that as well.

24 So then other than the deposition -- well, and then --
25 just to finish the thought on this before we move on.

1 So I'll -- once you submit those to me, I'll read
2 through them. I'll try to rule on it as much as possible
3 during next week. Certainly if there are areas where I need
4 argument, I guess we'll just have to wait and do that after we
5 get started.

6 We are picking a jury Monday morning, October 1st, so
7 we may have to deal with some of this when we have gaps or can
8 take a break from jury selection or the jury process.

9 All right?

10 MS. JONES: That's fine, Your Honor. Thank you.

11 THE COURT: All right. So then my deputy clerk gave
12 you all copies of the jury questionnaire. I took what you
13 submitted, made some additions and changes to it, and sent it
14 out to -- I think we ended up with a net of about 87 jurors on
15 the panel who received this.

16 Yesterday was their deadline for responses. And
17 today, just before I came in, the clerk's office brought me 67
18 of the 87 that were sent out. 67 have been returned. She
19 indicated, the clerk downstairs indicated that she had pending
20 phone calls from a few people that she assumed were maybe
21 about this. She's going to send another message to these
22 folks reminding them, those 20 who hadn't sent their
23 questionnaires back, that they need to do so immediately.

24 So my thought is that we'll probably see what we get
25 in the mail tomorrow. And then after that, I'm going to

1 start -- or at that point I'm going to start going through
2 these.

3 As you can see from the questionnaire, the first
4 question deals really with an employment hardship or something
5 like that. I feel like that is up to the Court's discretion
6 to resolve. And so I'm going to go through these and examine
7 those who have some type of a hardship like that and determine
8 whether or not to excuse them. So I may excuse them, I may
9 not.

10 Then the bulk of the other questions are obviously
11 matters that pertain to some knowledge or experience about
12 something that may well be relevant to the issues to be tried.
13 Those I don't intend to address at all at this point. I think
14 those are matters that we will have to deal with when we do
15 jury selection.

16 So what I would expect to do is, by the end of this
17 week, excuse those individuals who have reported some
18 hardship. And then with what is left, we will have a pool of
19 jurors who have completed the questionnaire and sent it in and
20 not been excused for a hardship. And I intend to take some
21 number of those, probably 40 to 50, and have the clerk
22 randomly pick 40 to 50 of those by computer. And those will
23 be the people who will be informed that they must be here on
24 October 1st at 8:30.

25 And when they assemble, we'll then start our usual

1 jury selection process. We will provide to you copies of the
2 questionnaires submitted by the 40 or 50 that we have show up
3 here, and then we'll conduct voir dire.

4 I know each side has offered additional and proposed
5 voir dire questions. I've looked through them, and I don't
6 see much at issue. A lot of it is already addressed in this
7 questionnaire, but we'll be able to do more follow up and
8 individual questioning of jurors as necessary from -- on
9 Monday. So that is generally the way I expect to handle it.

10 In our clerk's office, when jurors assemble -- and
11 I've said 40 to 50. I just haven't had a chance to think
12 through how many people as jurors I want to show up here, but
13 it will be probably in that range.

14 And then once they're here, the clerk's office assigns
15 each of them a random number, No. 1 through 40 or whatever the
16 number is, and they're given stickers to wear on their
17 clothing that identifies them by that number. And then when
18 we're ready here, the clerk's office will send them up, and
19 they'll be seated in numerical order here in the courtroom,
20 and then that's when I'll conduct the voir dire.

21 Hopefully by about next Wednesday, if not sooner, I
22 will forward to counsel proposed preliminary instructions and
23 proposed voir dire and give you a chance to respond to that
24 and, if necessary, we can take it up the morning we start the
25 trial.

1 I don't know if you all asked me before, so I'll tell
2 you my usual approach is that I'll do the voir dire here in
3 the open courtroom. Then it's typically the case that we have
4 individual follow up for a number of jurors. And so my
5 general practice is to reconvene in the conference room and
6 literally go in numerical order to ask counsel if there is
7 individual follow up that they believe we should conduct in
8 private in the conference room. We will call the juror in and
9 do that.

10 I usually let the lawyers participate in that follow
11 up as long as they're reasonable and fair questions. But
12 we'll go through all of that individual voir dire and then
13 after that do strikes.

14 I like to use all of the jurors in that once I've
15 excused jurors for cause, we'll reduce down to some number,
16 and then I'll divide the -- we're going to need eight jurors,
17 and so -- you know, we don't use alternates in federal court,
18 all jurors participate. We have to have six to go to verdict
19 unless the parties stipulate to the contrary. So as a result,
20 we'll have eight jurors. So I'll divide up the number of
21 strikes remaining and maybe give you more strikes than usual
22 just depending on how many jurors have been excused for cause.

23 So any questions about any of this at this point?

24 MR. CHILDERS: I apologize for not knowing this.
25 What's the usual number of strikes?

1 THE COURT: Well, I think the rule provides -- is it
2 six or eight?

3 THE CLERK: Six.

4 THE COURT: Six, isn't it, or seven?

5 I'm not sure. I'll look it up.

6 MR. CHILDERS: Okay.

7 THE COURT: I'm pretty confident that you'll get more
8 than that.

9 MR. CHILDERS: Okay.

10 THE COURT: Because I think because of the medical
11 issues, my guess is we're going to have a lot of folks who
12 have reported on these questionnaires that they know or are
13 someone who has used a blood thinner or something similar or
14 have some other relevant experience. So my guess is that
15 we'll have a lot of people who have questions like that, and
16 some may be excused, but many may remain, and you'll have to
17 decide whether to use strikes or not.

18 But I'm pretty sure -- we usually have more than the
19 minimum number for the strikes for peremptory challenges by
20 each side, so you'll probably get maybe significantly more.
21 And in a civil case, I'll just divide them between the two
22 sides.

23 Anything else than what I've discussed so far?

24 Yes, sir.

25 MR. LEWIS: Good afternoon, Your Honor. John Lewis.

1 Just a couple questions.

2 So if I understand correctly, the parties basically
3 strike down to eight jurors --

4 THE COURT: Right.

5 MR. LEWIS: -- essentially?

6 Okay. And reverse engineer the number of
7 peremptories?

8 THE COURT: Yes.

9 MR. LEWIS: Okay. And then on the questionnaires, do
10 we get those before the morning of jury selection?

11 THE COURT: Yes. Yes.

12 My plan would be that I'm -- my goal is to go through
13 these questionnaires on or before Friday, excuse for hardship
14 any of those that the Court deems appropriate, and then that
15 will leave us with a pool of 60 or 70 or 80. And then I'll
16 have the clerk's office downstairs draw from that pool 40 or
17 50 or some number. And once we do that, those will be the
18 people who we will have identified and confirmed to them that
19 they must show up. And at that point, I think by the first of
20 the week, we would be able to send to you the names and the
21 questionnaires.

22 MR. LEWIS: Okay. Great. Thank you.

23 THE COURT: You'll have those in advance of starting
24 the jury selection --

25 MR. LEWIS: Thank you.

1 THE COURT: -- well before.

2 MR. LEWIS: Thank you, Your Honor.

3 THE COURT: Okay?

4 I know there had been some talk or discussion maybe
5 about logistics for counsel. At this point, I think we can
6 offer you two rooms. Unfortunately we just don't have a lot
7 of space in this building, and there was no thought at the
8 time of the courthouse being constructed here to have counsel
9 rooms and so forth, but we've got an option that I think would
10 work quite well.

11 So down the hall from here, we have a conference room.
12 We use it as a witness room, so sequestered witnesses are
13 often seated in there, and that is very close to the
14 courtroom. So what I'm inclined to do is to say that the
15 party who is putting on their case, plaintiffs first, would
16 have use of that room as their staging room, so to speak,
17 while putting on their case, how many ever days that takes.

18 And then downstairs, the clerk's office tells me they
19 have a training room that has tables. Obviously it's got
20 electrical outlets and perhaps even computer cables and stuff,
21 but there is nothing in there. There is no equipment in there
22 at all. So I would -- we're going to confirm this, but I'm
23 likely to say that the party not putting on their case can use
24 that as their staging room.

25 And then it looks to me like witnesses are not going

1 to be really numerous, and that they're going to be examined
2 at length, so I don't think we're going to have six or eight
3 people as witnesses sitting around waiting to testify. So
4 I'll figure out some other place for witnesses to be told to
5 wait.

6 Will the parties expect the witnesses to be
7 sequestered or do you care in this case?

8 MR. CHILDERS: I don't think there are that many live
9 witnesses that it's really going to matter.

10 THE COURT: Well, think about it. I don't need to
11 address that yet. We've got literally places down the hall
12 where there is some seating out in the hallway or other
13 places. So if we're just going to have one or two witnesses
14 every few hours, then it shouldn't be a problem not having a
15 conference room for them to wait in. But I'll let you know.
16 And if you don't care, then they can sit in the courtroom.

17 MR. CHILDERS: Okay.

18 MS. JONES: Your Honor, may I just raise one other
19 mundane question?

20 To the extent that we wanted to be able to bring lunch
21 into the courtroom, is that permitted or do we need --

22 THE COURT: Well, not into the courtroom.

23 MS. JONES: Not the courtroom, I apologize. The
24 courthouse.

25 THE COURT: Yes, you can do that. And we would expect

1 you to just take it to whichever one of these two staging
2 rooms you're occupying at the time.

3 MS. JONES: Okay. Thank you.

4 MR. CHILDERS: And the staging rooms, are we allowed
5 to leave things there overnight or do we need to take it out?

6 THE COURT: No, I think you can leave things there
7 overnight for the duration --

8 MR. CHILDERS: Okay.

9 THE COURT: -- of your occupancy of it at least.

10 So we've discussed jury selection and voir dire.

11 I also will prepare preliminary instructions. It's
12 generally very simple. The first part is boilerplate language
13 that simply tells the jury that they're the triers of fact,
14 how to judge witnesses, et cetera.

15 And then we provide a relatively brief statement of
16 the elements of the claims and the elements of the defenses,
17 without elaboration or argument, just to give the jury a grasp
18 of the issues that they'll be expected to consider as they
19 hear the testimony. So I will expect to have that out to you
20 by the middle or end of next week at the latest with the
21 proposed voir dire, and then we can take up any objections.

22 You've both submitted proposed instructions Friday, so
23 I haven't looked at them yet. From looking at the amended
24 pretrial order, there doesn't seem to be a great deal of
25 argument, maybe with one or two exceptions, about what the

1 claims are and the elements and so forth. So I expect it to
2 be a generalized statement for the jury. I don't want to get
3 into a very detailed or elaborate instruction about the claims
4 and defenses before the jury has even heard openings or any
5 evidence. So that's my usual approach to it.

6 So anything else on your all's agenda that -- you're
7 both, I take it, aware you have to contact our IT people and
8 go through the process of figuring how to use this equipment?
9 None of us here are troubleshooters. We don't use it, we just
10 watch it, so don't expect us to help you. We can't save you
11 if you are in front of the jury and struggling to get
12 something to play.

13 If you expect that you've got something that is
14 complicated, make sure that the IT people you talk to know
15 about it. And if you think for some reason that, you know,
16 there is some concern that maybe we need to have somebody from
17 IT available, we can look into that. But otherwise, those
18 people are in Charleston, an hour away, and so they are not
19 going to be here magically unless we tell them to expect to be
20 here. So if that's a possibility, we could ask them to make
21 sure somebody is quickly available.

22 MS. JONES: Your Honor, just a couple of things from,
23 I guess, our side.

24 One is, we had filed a motion to bifurcate that I --

25 THE COURT: I was going to take that up next.

1 MS. JONES: -- think was unopposed, but I --

2 THE COURT: There was no response filed, as I recall.
3 And I think we discussed it briefly before, so I'm glad you're
4 bringing it up now.

5 I take it that the plaintiffs have no objection to
6 bifurcating the punitive damage claim?

7 MR. CHILDERS: That's correct, Your Honor. That's my
8 understanding how you have to do it.

9 THE COURT: Right. So I will grant the motion. I
10 will consider the punitive damage issue to be bifurcated from
11 the trial on the merits. It seems to me by doing that we
12 eliminate the need or relevancy in the plaintiffs' case in
13 chief on liability as to the financial standing of the company
14 and matters to the relevance only of punitive damages.

15 You have tried a bunch of these cases. I haven't. So
16 if you think there are specific areas of evidence that may be
17 arguably inappropriate for the liability phase, I would expect
18 the defense to raise that with me and let me know and let the
19 plaintiffs know. But, generally speaking, it's just a matter
20 of bifurcating the issue and some of the evidence pertaining
21 to the financial standing of the defendant.

22 Okay. And you had something else?

23 MS. JONES: One other issue, Your Honor.

24 You might have seen in the PTO that we had agreed on
25 certain arrangements for exchanging information about

1 exhibits --

2 THE COURT: Right.

3 MS. JONES: -- to be used, exchanging opening and
4 closing slides.

5 THE COURT: Right.

6 MS. JONES: Those are basically the protocols we've
7 used in the prior trials for these cases, but we wanted to be
8 sure that we had a sense from Your Honor if that is acceptable
9 to you. And if there are objections or issues that need to be
10 worked out, how you would like us to approach that.

11 THE COURT: Generally speaking, I'm willing to ratify
12 the agreement that counsel have reached and expressed in the
13 pretrial order. I don't have any issue with any of it. If
14 there is something that comes up that one party believes
15 should excuse them from or result in a modification of the
16 requirement, I would expect you to bring that to the Court's
17 attention if you can't work it out.

18 MS. JONES: And to the extent that we have issues
19 related to exhibits in connection with that process, are those
20 things that Your Honor would prefer that we raise -- obviously
21 as soon as we know about them, but -- in the morning before
22 court begins?

23 THE COURT: Yes. Yes.

24 MS. JONES: Okay. Thank you.

25 THE COURT: You know, generally speaking what I try to

1 do with the jury is basically a nine-to-five day. If it seems
2 that there are going to be a lot of things that need to be
3 taken up in the morning before the jury, you know, I would
4 consider bringing the jury in a little bit later, 9:30 or
5 10:00. But I expect you to bring those matters to the Court's
6 attention.

7 Anything else on your all's minds that you need to
8 talk about?

9 MR. CHILDERS: Your Honor, do you anticipate that
10 we'll do opening statements on the Monday that we select the
11 jury, or do you expect that will take all day?

12 THE COURT: Well, you know, generally even in some of
13 the lengthier, more complicated trials that we've done here,
14 we've had the jury impaneled and sworn in time to do opening
15 statements on the first day. And I would certainly like to do
16 that, if possible, so I would expect counsel to be prepared
17 for that.

18 I guess maybe it's unrealistic to think that you would
19 be able to present any evidence, but it would sure be good if
20 the plaintiffs have some evidence that they could present on
21 the first day, if we get to that point.

22 It's hard to tell how long this will take. You know,
23 I expect to have a little bit better idea after I've gone
24 through these questionnaires and see how many jurors have some
25 experience or knowledge with respect to the medical side of

1 this case, and that will tell us a lot about how extensive
2 we're going to have to go into this, how extensively we're
3 going to have to go into this with the jurors. I think that's
4 going to be the key to how long it takes to do the voir dire.

5 MR. CHILDERS: And for the openings, is it an hour
6 each side, Your Honor?

7 THE COURT: I am usually willing to give counsel what
8 you all work out.

9 I also do not use a stopwatch for these things. I
10 prefer to let the lawyers give their statements completely and
11 only start reminding people when they're getting close to
12 their time, and then I don't like to cut off people. I don't
13 have the Court of Appeals lights here that tell you to sit
14 down. So I would expect counsel to agree upon a time, and
15 then I'll follow that. And only when you get close to that
16 time am I going to do anything, and then I'll give you some
17 signals to let you close your thoughts so that it doesn't just
18 abruptly end.

19 MR. CHILDERS: Do you permit parties to split
20 openings, closings as far as two different lawyers to speak to
21 the jury as long as they stay within the time constraints?

22 THE COURT: If you ask me in advance, and if that's
23 what you're asking, then the answer would be yes.

24 MR. CHILDERS: I'm not certain that we will, but we
25 did previously, and we may do that again if that's okay with

1 Your Honor.

2 THE COURT: I would permit either side to do that.

3 MR. CHILDERS: Thank you, Your Honor.

4 MR. LEWIS: Just had one other thing, Your Honor.

5 THE COURT: Yes.

6 MR. LEWIS: It really kind of relates to process, but
7 we've flagged in the pretrial order an evidentiary issue
8 related to medical records and the absence of some medical
9 records.

10 THE COURT: Right.

11 MR. LEWIS: Really not to have that issue decided
12 right now, but more of a process question.

13 When we have these types of issues, does the Court
14 prefer that we sort of raise them ahead of time?

15 THE COURT: Yes.

16 MR. LEWIS: I mean, I see that issue being something
17 that we might be talking to you about real early on in the
18 case.

19 THE COURT: Absolutely.

20 MR. LEWIS: Okay.

21 THE COURT: Especially something like that where it
22 may affect a number of different witnesses.

23 MR. LEWIS: Right.

24 THE COURT: You know, I would much prefer to deal with
25 it in advance.

1 MR. LEWIS: Before the jury gets in the box and --

2 THE COURT: Yes.

3 MR. LEWIS: Okay. I figured, and so I just wanted to
4 make sure that's okay.

5 THE COURT: I know there's also an exchange in there
6 about some of the defendant's documents and their
7 admissibility under 801(d) and --

8 MR. LEWIS: Right.

9 THE COURT: -- what that means.
10 So if that is a matter that you folks can't work
11 out --

12 MR. LEWIS: Right.

13 THE COURT: -- then I would like that --

14 MR. LEWIS: Brought to your attention ahead of time.

15 THE COURT: -- brought to my attention as early as
16 possible to hear arguments and resolve it.

17 MR. LEWIS: Fair enough. And we'll continue to work
18 on that over the next couple of weeks to see if we can't
19 resolve them. And if not, we'll let you know.

20 THE COURT: You know, usually I don't start trials
21 until Tuesday, and one of the reasons I generally do that
22 is --

23 MR. LEWIS: Oh, okay.

24 THE COURT: -- it's really good to have Monday and
25 have the lawyers here to do all of these things the day before

1 trial.

2 MR. LEWIS: Right.

3 THE COURT: But given the length of this case, I was
4 concerned that we needed to use every day of the week, so we
5 don't have that benefit.

6 And I really don't want to have to drag you folks back
7 here next week. I know -- I want to find out what has
8 happened in your recent litigation, but knowing you're going
9 to be here for a long time, I'd rather not make you come in
10 here sometime late next week and have to do something if we
11 can figure out a way to do it after you're already here and
12 planning to be here.

13 So --

14 MR. LEWIS: I think --

15 THE COURT: -- whatever you can't work out about those
16 things let's talk about, and maybe -- if nothing else, maybe
17 we'll assume that we'll have a little bit lengthier session
18 Monday after we pick a jury and let them go before we start
19 getting into evidence, and I can hear argument about these
20 things, if necessary.

21 MR. LEWIS: Right. Okay. Thank you, Your Honor.

22 MR. CHILDERS: The only thing on that particular
23 issue, Your Honor, I think the issue they've raised will
24 impact what we can and can't say in our opening statement.

25 And so --

1 THE COURT: Which one are we talking about now, the
2 medical records?

3 MR. CHILDERS: About the medical records --

4 THE COURT: Whether there was a prior bleeding
5 incident?

6 MR. CHILDERS: Yes, sir.

7 THE COURT: Okay.

8 MR. CHILDERS: And so I'm not sure how we could wait
9 until --

10 THE COURT: Well, fine. I don't disagree. I know you
11 indicated you had three or four witnesses, the doctors who you
12 expected to elicit testimony from, and it doesn't surprise me
13 if you need to go over this.

14 Perhaps what we ought to do is have the parties file
15 something. And I guess the way I see it, the defense is
16 trying to restrict plaintiffs' evidence, so I think the burden
17 is on the defendant to assert its objection. And so I'd like
18 you to file something and then have a fairly quick response
19 and reply. And then I can at least look at it next week and,
20 if not rule on it, maybe be prepared to deal with it pretty
21 quickly on Monday.

22 MR. LEWIS: That's fair.

23 MR. CHILDERS: That's fine.

24 MR. LEWIS: We'll get something on file.

25 MR. CHILDERS: Absolutely.

1 THE COURT: When would you expect to --

2 MR. LEWIS: Early next -- early next week? Too late?

3 THE COURT: Well, you know, honestly if it's a matter
4 you've already identified, I'd rather you file something this
5 week --

6 MR. LEWIS: Okay.

7 THE COURT: -- so that I can make them respond pretty
8 quickly.

9 MR. LEWIS: Right. Right.

10 THE COURT: So today is Tuesday. If you could file
11 something by the end of business Thursday?

12 MR. LEWIS: Okay.

13 THE COURT: I'll give you until the end of business
14 Monday to respond?

15 If you see it, and you think that there is some reason
16 you need a little longer, you know, I'm probably okay with
17 getting something like on Tuesday, but I think we have to do
18 this pretty quickly.

19 MR. CHILDERS: If I could beg for Tuesday only because
20 this coming weekend is the last -- I'm going to spend it with
21 my family.

22 THE COURT: All right. We'll do that, then.

23 So why don't you file it by the end of business, by
24 5:00 Thursday; response by 5:00 next Tuesday.

25 And then I'll give you 48 hours to reply?

1 MR. LEWIS: Fair enough.

2 THE COURT: All right. That will get it to me by --

3 MR. LEWIS: The end of next week. Okay.

4 Thank you, Your Honor.

5 MR. CHILDERS: And I would like to address one thing
6 if I could.

7 In sort of trying to narrow the issues that we've
8 raised in the deposition objections and sort of figuring out
9 the difference in this case from some of the others that
10 you've heard -- this is the only case with a different dose of
11 Pradaxa -- I believe we're going to finish before the three
12 weeks is over, and I'm certainly endeavoring to make that
13 happen.

14 So if the Court would like us to use Monday to address
15 all these things, I don't think that's going to cause us to go
16 past our three-week time period. I think we would still end
17 before three weeks.

18 THE COURT: And not have the jury here on a Monday?

19 MR. CHILDERS: Correct.

20 And quite frankly, just because of the IT folks that
21 we use to help us with all this, if we could have that actual
22 day here in court with Your Honor to make those rulings, I
23 think that would make the trial go a lot smoother.

24 THE COURT: What do you all think?

25 MS. JONES: We have no objection to that if that is

1 acceptable to Your Honor. With the understanding that we
2 expect plaintiffs' case will move quickly, and we will
3 certainly endeavor to move quickly as well, then I think it's
4 probably fine.

5 THE COURT: All right. Well, I think we'll do that,
6 then. I will have to send you some confirmation later today
7 from my law clerk. I'll talk with the clerk's office
8 downstairs. I don't think it's a problem.

9 I know that in order to get -- frankly to get these
10 questionnaires out and back, the 87 people who received them
11 were told you're to be here October 1st, so those people are
12 already on notice to be here that Monday. I don't see that
13 it's a problem for us now to tell them Tuesday. And in any
14 event, we always have the call-in system, which we make them
15 call in in advance, the day before whenever they are supposed
16 to show up to make sure that they will still be here.

17 So I don't think it's a problem, but let me get back
18 with my staff before I confirm that. But if that works, then
19 we'll do a quick order that just says -- could we start at
20 10:00 on Monday morning to hear whatever I've got to hear?

21 MR. CHILDERS: That would be great for --

22 THE COURT: All right. So we'll assume that's the
23 case, but I'll confirm it if we can. We'll do an order that
24 schedules hearing argument on any motions or other matters on
25 Monday at 10:00 and jury trial starting the next day.

1 MR. CHILDERS: Thank you, Your Honor.

2 THE COURT: That would work real well for us, too. I
3 wanted to make sure we had enough days for the trial.

4 (Off-the-record discussion with law clerk.)

5 THE COURT: My clerks noted for me while we know you
6 have filed your proposed jury instructions, if you can provide
7 via e-mail a Word document with your instructions. They
8 should go to Blake, so we'll make sure we give you the
9 address, the e-mail address here in just a few minutes. But
10 that would be helpful, too, so we can cut and paste with it
11 much more effectively.

12 Blake, why don't you just give them your number.

13 MR. CHILDERS: I think we have it, Your Honor. We
14 have e-mailed with him already.

15 THE COURT: Okay. Then Blake is the one to send them
16 to.

17 (Off-the-record discussion with courtroom deputy.)

18 THE COURT: My courtroom deputy wants to have a brief
19 discussion with you after we conclude about exhibit lists.
20 And as I understand it, what you've told me in the pretrial
21 order is that you expect to do an exhibit notebook at the end
22 of the evidence, a joint notebook?

23 MS. JONES: That's what we've done in the prior
24 trials, but we're obviously happy to do whatever the Court
25 prefers. But in the prior trials, we've had a set of all of

1 the exhibits that were admitted.

2 THE COURT: Yeah, I think that would be real helpful.

3 As I've read that, you don't intend to provide
4 notebooks to the jury during the presentation of evidence. I
5 agree with that, that that would be helpful.

6 (Off-the-record discussion with courtroom deputy.)

7 THE COURT: And then we also expect you to file a list
8 of your exhibits. That will help us keep track of them and
9 properly identify them.

10 And then because we expect these to be voluminous
11 exhibits, to reduce them to a disk or disks at the end of the
12 trial to submit to the clerk's office so that they can use
13 disks rather than have to scan documents into the docket
14 report.

15 And if you need an explanation for that, Terry will
16 have to give it to you.

17 MR. CHILDERS: You're not speaking of all the
18 exhibits, just the ones --

19 THE COURT: The ones that are admitted.

20 MS. JONES: And for the list of exhibits that we're
21 filing, would it be helpful to have a Word version of that
22 sent as well by e-mail?

23 THE CLERK: Yes. We can talk about the logistics of
24 what it should look like afterwards.

25 MS. JONES: Okay.

1 THE COURT: Do you have anything else on your lists of
2 matters to be discussed?

3 MS. JONES: Does Your Honor prefer to have a book of
4 the exhibits that are being used with a specific witness, hard
5 copy exhibits to hand up to the bench?

6 THE COURT: I like to have it.

7 MS. JONES: Okay. We can certainly do that. I just
8 wanted to -- sometimes judges say don't give me any paper at
9 all.

10 THE COURT: Well, no, that is helpful. It is easier
11 for me to have something separately so I don't have to handle
12 the actual exhibits if I need to see something.

13 MS. JONES: Yeah.

14 THE COURT: Because we can lose them or get them
15 confused or mixed up quite easily passing them back and forth.

16 MS. JONES: Okay.

17 THE COURT: Okay?

18 MR. CHILDERS: In the prior trial, we've premarked all
19 of the exhibits. Do you want us to do that again? That makes
20 them somewhat out of order. Is that okay, though, with the
21 Court?

22 THE COURT: Out of order --

23 MR. CHILDERS: It's not going to be Exhibit 1, Exhibit
24 2, Exhibit 3 because they are premarked with specific numbers.

25 THE COURT: I think it helps to premark just because

1 it keeps it straight, and we have an easily identified list
2 that we can go by that tells us what each one is. And it
3 doesn't trouble me that you're presenting them out of
4 numerical order.

5 MR. CHILDERS: Okay. Great. Thank you.

6 THE COURT: You all are getting along so well, I just
7 can't believe you haven't settled this case.

8 What's happening in these recent trials? How many of
9 these cases have you tried since we were here back in the
10 spring?

11 MR. CHILDERS: None.

12 THE COURT: None?

13 MR. CHILDERS: There is one underway right now in
14 Connecticut, but they just started.

15 THE COURT: Oh, really?

16 MR. CHILDERS: Yes, sir.

17 THE COURT: I thought there were some scheduled in
18 August.

19 MR. CHILDERS: We had a trial scheduled in Columbus,
20 Georgia in August, and we found out in July that the
21 courthouse was going to be under renovation or was going to
22 still be under renovation. I think they thought it was going
23 to be finished earlier. They couldn't bring juries into the
24 courtroom, so we've been reset for December 3rd.

25 THE COURT: Okay. I take it still no change in the

1 settlement posture of the parties?

2 My recollection was the defense had stated that the
3 client was unwilling to settle these cases or this case in
4 particular. Is that still the case?

5 MS. JONES: I think we're not -- we're not in a
6 different position than we were before, Your Honor.

7 THE COURT: Okay. Well, all right. Is there anything
8 else that we need to take up today? If not, thank you all for
9 being here.

10 And let us know when you have reached whatever
11 resolution you can on these deposition designations so we know
12 when to expect that, but at the latest the time frame that we
13 discussed.

14 If there is nothing further, we stand adjourned.

15 MR. CHILDERS: Thank you, Your Honor.

16 MS. JONES: Thank you, Your Honor.

17 THE COURT SECURITY OFFICER: All rise. This honorable
18 court will be adjourned.

19 (Proceedings were concluded at 2:05 p.m.)

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1 CERTIFICATION:

2 I, Kathy L. Swinhart, CSR, certify that the foregoing
3 is a correct transcript from the record of proceedings in the
4 above-entitled matter as reported on September 18, 2018.
5
6

7 September 24, 2018
8 DATE

9 /s/ Kathy L. Swinhart
10 KATHY L. SWINHART, CSR
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